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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF SPOKANE**

8 ROBERTA FRANK, an individual, and all
9 those similarly situated,

10 Plaintiff,

11 vs.

12 CANNABIS & GLASS, LLC, a
13 Washington limited liability company;
14 NXNW Retail, LLC, a Washington limited
liability company; SPRINGBIG, INC., a
Delaware corporation; and TATE KAPPLE
and his marital community;

15 Defendants.

16 Case No.

17 **COMPLAINT FOR DAMAGES**

18 COMES NOW the Plaintiff, ROBERTA FRANK, by and through her attorneys of record,
19 Brian G. Cameron of Cameron Sutherland, PLLC, and Kirk Miller of Kirk D. Miller, P.S., and for
causes of action against the above-named Defendants, complains and alleges as follows:

20 **I. INTRODUCTION**

21 1.1 This case involves the Defendants' widespread transmission of unsolicited
22 commercial text messages related to a consumer "loyalty program" without obtaining the
23 recipients clear, affirmative, and express written consent to receive such messages in violation of
24 the federal Telephone Consumer Protection Act (TCPA), 47 USC § 227, *et seq.*, and Washington's

1 Consumer Protection Act (CPA), RCW 19.86, *et seq.*, vis à vis the Defendants' violations of
2 Washington's Commercial Electronic Mail Act (CEMA), RCW 19.190, *et seq.*

3 1.2 The Plaintiff brings this class action Complaint, by and through her undersigned
4 counsel, against Defendants CANNABIS & GLASS, LLC (hereinafter "Cannabis & Glass");
5 NXNW RETAIL, LLC, d.b.a. Cannabis & Glass (hereinafter "NXNW"); and SPRINGBIG, INC.
6 (hereinafter "Springbig"), and on behalf of a class of all others similarly situated, pursuant to CR
7 23.

8 1.3 The Plaintiff seeks statutory damages, exemplary damages, declaratory and
9 injunctive relief, costs and attorneys' fees, and other equitable relief against Defendants for their
10 illegal "junk texting" to Washington consumers and businesses.

11 1.4 In bringing this action, Ms. Frank alleges that Defendant Tate Kapple, the sole
12 member and owner of Defendant Cannabis & Glass and Defendant NXNW, is personally liable
13 for the actions of each of his solely-held limited liability companies pursuant to RCW 25.15.061.

14 1.5 The named individual and his marital community are liable for the actions
15 complained of herein, because these actions were in furtherance of and for the benefit of the
16 individual's marital community.

17 II. IDENTITY OF THE PARTIES

18 2.1 Plaintiff Roberta Frank is a natural person residing in Spokane County, who
19 engaged in one or more retail transactions with Defendant Cannabis & Glass and Defendant
20 NXNW. The Plaintiff and putative class members are consumers and business entities residing in
21 the state of Washington. The Plaintiff and putative class members are all "persons" as that term
22 is defined in 42 USC § 153(39); RCW 19.190.010(11); and RCW 19.86.010(1).

23 4.1 Defendant Cannabis & Glass is a Washington limited liability company, doing
24 business in Spokane County, with its principal place of business located at 9403 East Trent Avenue
25 in Spokane Valley.

1 4.2 Defendant Cannabis & Glass is a “person” as that term is defined in 42 USC §
2 153(39); RCW 19.190.010(11); and RCW 19.86.010(1).

3 2.2 Defendant NXNW is a Washington limited liability company, doing business in
4 Spokane County, with its principal place of business located at 23005 East Colt Lane in Liberty
5 Lake.

6 2.3 Defendant NXNW is a “person” as that term is defined in 42 USC § 153(39); RCW
7 19.190.010(11); and RCW 19.86.010(1).

8 2.4 Defendant Springbig is a Delaware corporation, doing business in Spokane County,
9 with its principal place of business located at 621 Northwest 53rd Street, Suite 260, in Boca Raton,
10 Florida.

11 2.5 Defendant Springbig is a “person” as that term is defined in 42 USC § 153(39);
12 RCW 19.190.010(11); and RCW 19.86.010(1).

13 2.6 Defendant Tate Kapple is an individual who is believed to be a resident of Spokane
14 County, doing business in Spokane County, as the sole governor and owner of Defendant Cannabis
15 & Glass and Defendant NXNW. Mr. Kapple uses these corporate forms, individually and
16 collectively, to violate or evade a duty in such a manner that the corporate form must be
17 disregarded to prevent loss to an innocent party.

18 2.7 Defendant Kapple is a “person” as that term is defined in 42 USC § 153(39); RCW
19 19.190.010(11); and RCW 19.86.010(1).

20 2.8 Each of the Defendants is a person that regularly uses automatic telephone dialing
21 systems or other devices to initiate or assist in the transmission of unsolicited commercial text
22 messages to Washington recipients without obtaining those recipients’ clear, affirmative, and
23 express written consent to receive such messages in advance.

III. STATEMENT OF JURISDICTION AND VENUE

3.1 This Court has jurisdiction over the parties to this action pursuant to RCW 4.28.080 and 4.28.185.

3.2 Venue is proper in this Court pursuant to RCW 4.12.020.

IV. CLASS ACTION ALLEGATIONS

4.1 The Plaintiff brings this claim on behalf of the following class, pursuant to CR 23(a) and CR 23(b)(3).

4.2 The class consists of:

- (a) all persons, as that term is defined in in 42 USC § 153(39); RCW 19.190.010(11); and RCW 19.86.010(1);
- (b) in the state of Washington;
- (c) to whom Defendants initiated or assisted in the transmission of one or more unsolicited commercial text messages using an automatic telephone dialing system or other device;
- (d) without obtaining the recipients' clear, affirmative, and express written consent to receive such messages in advance;
- (e) within the previous four (4) years;
- (f) through the date that the class is certified.

4.3 The identities of all class members are readily ascertainable from the contact records of the Defendants and those businesses and consumers who have been targeted by the Defendants' unsolicited commercial text messages.

4.4 Excluded from the Class are the Defendants and all officers, members, partners, managers, directors, and employees of the Defendants and their respective immediate families, and legal counsel for all parties to this action and all members of their immediate families.

1 4.5 This action has been brought, and may properly be maintained, as a class action
 2 pursuant to the provisions of CR 23, because there is a well-defined community interest in the
 3 litigation:

- 4 (a) Numerosity: The Class defined above is so numerous that joinder of all members
 5 would be impractical. The Defendants serve a retail customer base of thousands of
 6 individuals in Washington whom the Defendants regularly target with more than a dozen
 7 unsolicited “junk texts” every month.
- 8 (b) Common Questions Predominate: Common questions of law and fact exist as to
 9 all members of the Class and those questions predominate over any questions or issues
 10 11 involving only individual class members. The principal issue is whether the Defendants’
 12 use of automatic telephone dialing systems or other devices to initiate or assist in the
 13 transmission of unsolicited commercial text messages to Washington recipients violated
 14 the federal TCPA, 47 USC § 227, *et seq.*, and Washington’s CEMA, RCW 19.190, *et seq.*,
 and CPA, RCW 19.86, *et seq.*
- 15 (c) Typicality: Plaintiff’s claims are typical of the claims of the class members.
 16 Plaintiff and all members of the Plaintiff Class have claims arising out of the Defendants’
 17 common uniform course of conduct complained of herein.
- 18 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the class
 19 members insofar as Plaintiff has no interests that are averse to the absent class members.
 20 The Plaintiff is committed to vigorously litigating this matter. The Plaintiff has also
 21 retained counsel experienced in handling consumer lawsuits, complex legal issues, and
 22 class actions. Neither the Plaintiff nor its counsel have any interests which might cause it
 23 not to vigorously pursue the instant class action lawsuit.
- 24 (e) Superiority: A class action is superior to the other available means for the fair and
 25 efficient adjudication of this controversy because individual joinder of all members would

1 be impracticable. Class action treatment will permit a large number of similarly situated
2 persons to prosecute their common claims in a single forum efficiently and without
3 unnecessary duplication of effort and expense that individuals' actions would engender.

4 4.6 Certification of a class under CR 23(b)(3) is also appropriate in that the questions
5 of law and fact common to members of the Class predominate over any questions affecting an
6 individual member, and a class action is superior to other available methods for the fair and
7 efficient adjudication of the controversy.

8 4.7 The Plaintiff's claims apply to the Defendants' illegal acts and omissions occurring
9 in the four years preceding the filing of this case, through the date that the class is certified.

10 **V. PLAINTIFF'S ALLEGATIONS OF FACT**

11 5.1 The Plaintiff repeats, reiterates, and incorporates the allegations contained in
12 paragraphs above herein with the same force and effect as if the same were set forth at length
13 herein.

14 5.2 The Plaintiff is a Washington individual who regularly uses a mobile telephone
15 with the capacity to send and receive transmissions of text messages.

16 5.3 Together, defendants Cannabis and Glass, NXNW, and Springbig jointly operate a
17 "loyalty program" that purports to reward returning customers with various product discounts and
18 incentives at Defendant Cannabis and Glass' and Defendant NXNW's retail locations.

19 5.4 Defendants Cannabis and Glass and NXNW each gathers telephone contact
20 information from first-time and returning customers, including but not limited to the Plaintiff,
21 during the course of those customers in-store transactions.

22 5.5 Defendants Cannabis and Glass and NXNW each provide the telephone contact
23 information gathered from first-time and returning customers to Defendant Springbig, which
24 compiles that information into telemarketing lists to be targeted by its commercial "text blasts"
25 promoting the sale of Defendant Cannabis and Glass' and Defendant NXNW's products.

1 5.6 Neither Defendant Cannabis and Glass nor Defendant NXNW obtains consumers'
2 clear, affirmative, and express written consent to receive their commercial text messages prior to
3 transmitting or assisting in the transmission of such messages to those consumers through the use
4 of automatic telephone dialing systems or other devices.

5 5.7 In or about April 2019, the Plaintiff visited Defendant Cannabis & Glass' retail
6 location, during which time Defendant Cannabis & Glass obtained her SMS-capable cellular
7 telephone number.

8 5.8 In or about April, 2019, Defendant Cannabis & Glass obtained Plaintiff's SMS-
9 capable cellular telephone number verbally at the point of sale.

10 5.9 The Plaintiff did not consent, in writing or otherwise, to receive unsolicited
11 commercial text messages from Defendant Cannabis and Glass, its agents, or its assistants.

12 5.10 Plaintiff was not advised by Defendant Cannabis & Glass verbally, in writing, or
13 otherwise that providing her cellular telephone number would result in her receiving text messages
14 from Defendants.

15 5.11 Defendant Cannabis & Glass told Plaintiff that her phone number and first name
16 were required to be enrolled in Defendants' loyalty program to receive discounts on future
17 purchases.

18 5.12 In April 2019, the Plaintiff visited Defendant NXNW's retail location, during which
19 time Defendant NXNW advised Plaintiff that it was unnecessary for her to enroll in a separate
20 NXNW rewards program, because its loyalty program is combined with Defendant Cannabis &
21 Glass' rewards program.

22 5.13 The Plaintiff did not consent, in writing or otherwise, to receive unsolicited
23 commercial text messages from Defendant NXNW, its agents, or its assistants.

1 5.14 Defendant Springbig designs, maintains, and operates the software and
2 telecommunications systems that support Defendant Cannabis & Glass' and Defendant NXNW's
3 joint "loyalty program."

4 5.15 Defendant Springbig utilizes automatic telephone dialing systems or other devices
5 to initiate or assist in the transmission of unsolicited commercial text messages to targeted
6 recipients without first obtaining those recipients' clear, affirmative, and express written consent
7 to receive such messages in advance.

8 5.16 Defendants Cannabis and Glass and NXNW each provided the Plaintiff's telephone
9 number to Defendant Springbig without the Plaintiff's knowledge or consent.

10 5.17 The Plaintiff did not consent, in writing or otherwise, to receive unsolicited
11 commercial text messages from Defendant Springbig, its agents, or its assistants.

12 5.18 Defendant Springbig does not ensure that the clients for whom it sends unsolicited
13 commercial text messages obtain prior express written permission from targeted recipients before
14 sending unsolicited commercial text messages to those clients' customers.

15 5.19 Since the time Defendants Cannabis & Glass and NXNW obtained her telephone
16 number in April 2018, the Defendants have used an automatic telephone dialing system or other
17 device to barrage the Plaintiff with scores of unsolicited junk texts related to their "loyalty
18 program."

19 5.20 In the four years prior to the Defendants' transmission of its first unsolicited
20 commercial text message to Plaintiff, through the date of the filing of this action, the Defendants
21 have illegally utilized or assisted in the utilization of automatic telephone dialing systems or other
22 devices to transmit tens of thousands of unsolicited commercial text messages to thousands of
23 recipients without first obtaining those recipients' clear, affirmative, and express written consent
24 to receive such messages in advance.

5.21 As a result of the Defendants' actions and omissions, the Plaintiff and members of the putative class have suffered injuries-in-fact, including invasions of privacy, intrusion upon and occupation of the capacity of recipients' telephones or other devices and chattels, and wasting consumers' time and attention in tending to unwanted and junk text messages.

5.22 As a result of the Defendants' actions and omissions, the Plaintiff and members of the putative class are entitled to recover statutory damages of at least \$500 for each of the Defendants' violations, plus actual damages, costs, and fees as provided by applicable statutes.

VI. FIRST CAUSE OF ACTION

Violations of the Telephone Consumer Protection Act (TCPA)

47 USC §227, *et seq.*

6.1 Plaintiff repeats, reiterates, and incorporates the allegations contained in the paragraphs above herein with the same force and effect as if the same were set forth at length herein.

6.2 The TCPA prohibits any business or individual from using an automatic telephone dialing system to transmit unsolicited commercial text messages without first obtaining the recipients' express written consent to receive such messages. 47 USC § 227(b)(1)(C)(ii); 47 CFR § 64.1200(a)(2).

6.3 The actions and omissions of each Defendant in this regard violated 47 USC § 227,
et seq.

6.4 As a result of the Defendants' violations, the Plaintiff has suffered injuries-in fact, including but not limited to invasions of privacy, trespass to chattels, lost time, and distraction. Pursuant to 47 USC § 227(b)(3), Plaintiff is entitled to an award of \$500, plus an exemplary award increasing those damages to \$1,500, for each of the Defendants' violations.

VII. SECOND CAUSE OF ACTION
Violation of Washington's Consumer Protection Act
RCW 19.86, *et seq.*

7.1 Plaintiff repeats, reiterates, and incorporates the allegations contained in the paragraphs above herein with the same force and effect as if the same were set forth at length herein.

7.2 Washington's CPA states in part that: "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." RCW 19.86.020.

7.1 The Defendants engaged in unfair acts and practices in the conduct of trade or commerce in a manner that offended the public interest and caused injury to the plaintiff and actually injured, has the capacity to injure, or had the capacity to injure other persons.

7.2 The actions and omissions of each Defendant in this regard violated RCW 19.86,
et seq.

7.3 Washington's CEMA prohibits any "person," as that term is defined in RCW 19.190.010(11), from initiating or assisting in the transmission of a commercial text message to a Washington resident's phone or similar device, unless the recipient has clearly and affirmatively consented in advance to receive such text messages. RCW 19.190.070(1)(b).

7.4 Each of the Defendants, individually and collectively, initiated or assisted in the transmission of one or more unsolicited commercial text messages to the Plaintiff and putative class members without first obtaining those recipients' clear and affirmative consent to receive such messages.

7.5 The actions and omissions of each Defendant in this regard violated RCW 19.160.060(1).

7.6 Pursuant to RCW 19.190.100, initiating or assisting in the transmission of unsolicited commercial text messages to recipients who have not clearly and affirmatively consented to receiving such text messages is an unfair or deceptive act in trade or commerce for purposes of applying the CPA.

7.7 Pursuant to RCW 19.190.100, initiating or assisting in the transmission of unsolicited commercial text messages to recipients who have not clearly and affirmatively consented to receiving such text messages is a matter affecting the public interest for purposes of applying the CPA.

7.8 Pursuant to RCW 19.190.100, initiating or assisting in the transmission of unsolicited commercial text messages to recipients who have not clearly and affirmatively consented to receiving such text messages is not reasonable in relation to the development and preservation of business.

7.9 Pursuant to RCW 19.19.040(1), damages to each recipient of a commercial electronic text message sent in violation of the CEMA are the greater of \$500 or actual damages, which establishes the injury and causation elements of a CPA claim as a matter of law. *Wright v. Lyft, Inc.*, 189 Wn.2d 718, 732, 406 P.3d 1149, 1155 (2017).

7.10 The Defendants' acts and omissions complained of herein actually injured other persons and have the capacity to injure other persons.

7.11 As a result of the Defendants actions and omissions, the Plaintiff and members of the putative class are each entitled to recover \$500, plus exemplary damages of \$1,500, plus costs and reasonable attorneys' fees for each CEMA violation committed by the Defendants.

II. PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

7.1 Declaring that this action is properly maintainable as a Class action and certifying the Plaintiff as Class representative and Kirk D. Miller of Kirk D. Miller, PS, and Brian G. Cameron of Cameron Sutherland, PLLC, as Class Counsel;

7.2 Awarding Plaintiff and the Class actual and statutory damages, costs, and fees pursuant to 47 USC § 227(b)(3), RCW 19.190.040(1), and RCW 19.86.090;

7.3 Awarding treble damages pursuant to the federal TCPA and Washington's CPA.

7.4 Granting injunctive relief prohibiting Defendants from transmitting unsolicited advertisements without first obtaining recipients' clear, affirmative, and express written consent to receive such text messages.

7.5 Granting declaratory relief finding that the Defendants' conduct violated the federal
TCPA as well as Washington's CEMA and CPA.

7.6 Awarding the Plaintiff her costs in this action, including reasonable attorneys' fees and expenses; and

7.7 Awarding Plaintiff and the Class such other and further relief as the Court may deem just and proper.

DATED this 11 day of June, 2019.

KIRK D. MILLER, P.S.

Kirk D. Miller, WSBA #40025
Attorney for Plaintiff

CAMERON SUTHERLAND, PLLC

~~Brian G. Cameron, WSBA #44905~~
Attorneys for Plaintiff